

SECOND REGULAR SESSION

SENATE BILL NO. 731

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NASHEED.

Read 1st time January 16, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

5065S.01I

AN ACT

To repeal sections 82.1025, 82.1027, 82.1028, 82.1029, and 82.1030, RSMo, and to enact in lieu thereof five new sections relating to property regulations in certain cities and counties.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 82.1025, 82.1027, 82.1028, 82.1029, and 82.1030, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 82.1025, 82.1027, 82.1028, 82.1029, and 82.1030, to read as follows:

82.1025. 1. In any county of the first classification with a charter form of government and a population greater than nine hundred thousand, in any county of the first classification with more than one hundred ninety-eight thousand but fewer than one hundred ninety-nine thousand two hundred inhabitants, in any county of the first classification with more than seventy-three thousand seven hundred but fewer than seventy-three thousand eight hundred inhabitants, in any county of the first classification with more than ninety-three thousand eight hundred but fewer than ninety-three thousand nine hundred inhabitants, in any home rule city with more than one hundred fifty-one thousand five hundred but fewer than one hundred fifty-one thousand six hundred inhabitants, in any city not within a county and in any city with at least three hundred fifty thousand inhabitants which is located in more than one county, a parcel of property is a nuisance, if such property adversely affects the property values of a neighborhood **or the property value of any property within the neighborhood** because the owner of such property allows the property to be in a deteriorated condition, due to neglect **or failure to reasonably maintain**, violation of a county or municipal building code [or], standard, **or ordinance**,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 abandonment, failure to repair after a fire, flood or some other damage to the
19 property or because the owner or resident of the property allows clutter on the
20 property such as abandoned automobiles, appliances or similar objects. Any
21 property owner who owns property within a reasonable distance to a parcel of
22 property which is alleged to be a nuisance may bring a nuisance action against
23 the offending property owner for the amount of damage created by such property
24 to the value of the petitioner's property and court costs, provided that the owner
25 of the property which is alleged to be a nuisance has received notification of the
26 alleged nuisance and has had a reasonable opportunity, not to exceed forty-five
27 days, to correct the alleged nuisance. This section is not intended to abrogate,
28 and shall not be construed as abrogating, any remedy available under the
29 common law of private nuisance.

30 2. **[A nuisance] An action for injunctive relief to abate a nuisance**
31 **under this section** may be brought by **anyone who owns property within**
32 **a reasonable distance to a property which is alleged to be a nuisance**
33 **or by** a neighborhood organization, as defined in section 32.105, representing any
34 person or persons who could maintain a nuisance action under this section or
35 under the common law of private nuisance.

36 3. **When a property owner or neighborhood organization bringing**
37 **an action under this section prevails in such action, such property**
38 **owner or organization may be entitled to an award for its reasonable**
39 **attorneys' fees and expenses, as ordered by the court, incurred in**
40 **bringing and prosecuting the action, which award for attorneys' fees**
41 **and expenses shall be entered as a judgment against the owner of the**
42 **property on which the act or condition constituting the nuisance**
43 **occurred or was located. Such judgment, if filed for record with the**
44 **recorder of deeds for the city or county in which the property is**
45 **located, shall constitute a lien against such property.**

82.1027. As used in sections 82.1027 to [82.1029] **82.1030**, the following
2 terms mean:

3 (1) **"[Local] Code or ordinance violation"**, a violation under the
4 provisions of a [local] **municipal code [of general ordinances] or ordinance** of
5 any home rule city with more than four hundred thousand inhabitants and
6 located in more than one county, **or any city not within a county**, which
7 regulates fire prevention, animal control, noise control, property maintenance,
8 building construction, health and sanitation, and nuisances;

9 (2) "Neighborhood organization", an organization defined in section
10 32.105;

11 (3) "Nuisance", within the boundaries of the community represented by
12 the neighborhood organization, an act or condition knowingly created, performed,
13 or maintained on private property that constitutes a [local] code **or ordinance**
14 violation and that[:

15 (a)] significantly affects the other residents of the neighborhood; **and:**

16 [(b)] (a) Diminishes the value of the neighboring property; [and] **or**

17 [(c)] (b) Is injurious to **the** public health, safety, **security**, or welfare of
18 neighboring residents or [obstructs] **businesses; or**

19 (c) **Impairs** the reasonable use **or peaceful enjoyment** of other
20 property in the neighborhood.

82.1028. Sections 82.1027 to [82.1029] **82.1030** apply to a nuisance
2 located within the boundaries of **any city not within a county and** any home
3 rule city with more than four hundred thousand inhabitants and located in more
4 than one county.

82.1029. 1. A neighborhood organization representing persons aggrieved
2 by a [local] code **or ordinance** violation may seek injunctive and other equitable
3 relief in the circuit court for abatement of a nuisance upon showing:

4 (1) The notice requirements of this subsection have been satisfied; and

5 (2) The nuisance exists and has not been abated.

6 2. An action under this section shall not be brought[:

7 (1) Until sixty days after the neighborhood organization sends notice of
8 the violation and of the neighborhood organization's intent to bring an action
9 under this section, by certified mail, return receipt requested, to the appropriate
10 municipal code enforcement agency;

11 (2) If the appropriate municipal code enforcement agency has filed an
12 action for equitable relief from the nuisance;

13 (3)] until sixty days after the neighborhood organization sends notice by
14 first class prepaid postage certified mail to:

15 (1) The tenant, if any, **or to "occupant" if the identity of the tenant**
16 **cannot be reasonably ascertained, at the property's address; and**

17 (2) The property owner of record **at the last known address of the**
18 **property owner on file with the county or city, or, if the property**
19 **owner is a corporation or other type of limited liability company, to the**
20 **property owner's registered agent at the agent's address of record;**

21 that a nuisance exists and that legal action may be taken if the nuisance is not
22 abated. If the notice sent by certified mail is returned unclaimed or refused,
23 designated by the post office to be undeliverable, or signed for by a person other
24 than the addressee, then adequate and sufficient notice may be given to the
25 tenant, if any, and the property owner of record by sending a copy of the notice
26 by regular mail **to the address of the property owner or registered agent**
27 and posting a copy of notice on the property where the nuisance allegedly is
28 occurring. **A sworn affidavit by the person who mailed or posted the**
29 **notice describing the date and manner that notice was given shall be**
30 **prima facie evidence of the giving of such notice.** The notice shall specify:

31 (a) The [nature of the alleged] **act or condition that constitutes the**
32 nuisance;

33 (b) The date [and time of day] the nuisance was first discovered;

34 (c) The **address of the property and** location on the property where the
35 **act or condition that constitutes the** nuisance is allegedly occurring **or**
36 **exists;** and

37 (d) The relief sought in the action.

38 3. In filing a suit under this section, an officer of the neighborhood
39 organization **or its counsel** shall certify to the court:

40 (1) That the neighborhood organization has taken the required steps to
41 satisfy the notice requirements under this [subsection] **section;** and

42 (2) That each condition precedent to the filing of the action under this
43 section has been met.

44 4. An action shall not be brought **under this section** against an owner
45 of residential rental property [unless, prior to giving notice under this section, a
46 notice of violation relating to the nuisance first has been issued by an appropriate
47 municipal code enforcement agency and remains outstanding after a period of
48 forty-five days] **based on an alleged code or ordinance violation if there**
49 **is a citation pending against the property or its owner by the city based**
50 **on an alleged violation of the same code or ordinance provision unless**
51 **such citation has been pending for more than forty-five days without**
52 **resolution. This subsection shall not prohibit an action under this**
53 **section based on an alleged code or ordinance violation for which no**
54 **city citation is pending.**

55 5. [(1) If a violation notice issued by an appropriate municipal code
56 enforcement agency is an essential element of the municipal enforcement action,

57 a copy of the notice signed by an official of the appropriate municipal code
58 enforcement agency shall be prima facie evidence of the facts contained in the
59 notice.

60 (2) A notice of abatement issued by the appropriate municipal code
61 enforcement agency in regard to the violation notice shall be prima facie evidence
62 that the plaintiff is not entitled to the relief requested] **A copy of the notice of**
63 **citation issued by the city that shows the date the citation was issued**
64 **shall be prima facie evidence of whether and for how long a citation**
65 **has been pending against the property or the property owner.**

66 6. A proceeding under this section shall:

67 (1) Be heard at the earliest practicable date; and

68 (2) Be expedited in every way.

69 **7. When a neighborhood organization prevails in an action**
70 **brought under this section, it may be entitled to an award for its**
71 **reasonable attorneys' fees and expenses, as ordered by the court,**
72 **incurred in bringing and prosecuting the action, which award for**
73 **attorneys' fees and expenses shall be entered as a judgment against the**
74 **owner of the property on which the act or condition constituting the**
75 **nuisance occurred or was located. Such judgment, if filed for record by**
76 **the recorder of deeds for the city or county in which the property is**
77 **located, shall constitute a lien against such property.**

82.1030. 1. Subject to subsection 2 of this section, sections 82.1027 to
2 82.1029 shall not be construed as to abrogate any equitable or legal right or
3 remedy otherwise available under the law to abate a nuisance.

4 2. Sections 82.1027 to 82.1029 shall not be construed as to grant standing
5 for an action[:

6 (1)] challenging any zoning application or approval[;

7 (2) In which the alleged nuisance consists of an interior physical defect
8 of a property; or

9 (3) Involving any violation of municipal alcoholic beverages law].

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